

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TRUSTEES OF PLUMBERS & STEAMFITTERS
LOCAL 21 WELFARE FUND,

Docket No. 08-CV-5262
(Robinson)

Plaintiffs,

-against-

**AFFIRMATION FOR
JUDGMENT BY DEFAULT**

MELANIE McINTYRE

Defendant.
-----X

State of New York : ss:
County of Nassau :

Danielle M. Carney, being duly sworn, says:

1. I am a member of the Bar of this Court and am associated with the firm Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC, attorneys for plaintiff in the above-entitled action and I am familiar with all the facts and circumstances hereinafter set forth.

2. I make this affidavit pursuant to section 55 of the Federal Rules of Civil Procedure in support of plaintiff's application for the entry of a default judgment against defendant.

3. This is an action to recover unpaid benefit contributions owed by defendant to plaintiff pursuant to a Collective Bargaining Agreement.

4. Jurisdiction of the subject matter of this action is based on 29 U.S.C. Section 1132(e)(i).

5. This action was commenced on June 9, 2008 by the filing of the summons and complaint. Annexed hereto and made a part hereof as "Exhibit A" is the Summons and Complaint. A copy of the Summons and Complaint was served on the defendant on June 25,

2008 and proof of service by the process server was filed with this Court on July 23, 2008. Annexed hereto and made a part hereof as "Exhibit B" is the Affidavit of Service. The defendant has not answered the complaint and the time for the defendant to answer the complaint or otherwise move in regard to it has expired.

6. The complaint seeks judgment for delinquent COBRA payments.

7. This action seeks judgment for a liquidated amount which includes \$4,044.40 in unpaid COBRA payments to the Fund, \$404.44 interest calculated at 10%, reasonable attorney fees in the amount of \$1,580.00 and court costs and disbursements in the amount of \$475.00 for a total of \$6,503.84 as shown by the Statement of Damages annexed hereto as Exhibit C, which is justly due and owing, and no part of which has been paid except as therein set forth.

8. The disbursements sought to be taxed have been made in this action or will necessarily be made incurred herein.

9. Since this action is based on an audit and costs which are not "susceptible of mathematical computation", there is no need to prove the amount of damages at an inquest proceeding. Muskin v. Ketchum, 2004 U.S. District, Lexis 20976 (SDNY 2004).

10. The Defendant is a domestic business corporation and thereby is not an infant or an incompetent.

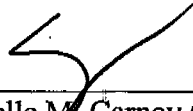
11. The attorney's fees are calculated as follows:

| | |
|--|-----------|
| • Sent demand letters (2) | 1.5 hours |
| • Prepared and filed Summons and Complaint | 2.6 hours |
| • Sent Complaint out for service | .3 hours |
| • Prepared request for Default Judgment | 3.5 hours |
| | <hr/> |
| | 7.9 hours |

Total: 7.9 hours x \$200 per hour = \$1,580

WHEREFORE, plaintiff requests the entry of Default and the entry of the annexed Judgment against the Defendant.

Dated: July 24, 2008



Danielle M. Carney (DMC7471)
BARNES, IACCARINO, VIRGINIA,
AMBINDER & SHEPHERD, PLLC
Three Surrey Lane, Suite 200
Hempstead, NY 11550
(516) 483-2990